Government of Madras

LAW (EDUCATION) DEPARTMENT

G.O. No. 317, 5th March 1921

Archæology—Ancient Monuments Preservation Act, 1904

Mangaladevi temple at Mangalore Protection—Draft agreement approved Advocate-General's opinion regarding registration of agreements—Communicated.

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Mangaladevi temple at Mangalore—Protection—Draft agreement approved—Advocate-General's opinion regarding registration of agreements—Communicated.

READ—the following papers :—

G.O. No. 1456, Home (Education), dated ... December 1920.

ABSTRACT.—Archæology—Ancient Monuments Preservation Act, 1904—Private monument in South Kanara district—Mangaladevi temple at Mangalore—Declared protected—Preliminary notification issued—Draft agreement called for.

G.O. No. 101, Law (Education), dated 21st January 1921.

ABSTRACT.—Archæology—Ancient Monuments Preservation Act, 1904—Mangaladevi temple at Mangalore in South Kanara district—Declared protected—Final notification issued.

II

Letter—from R. H. ELLIS, Esq., I.C.S., Collector of South Kanara.

To—the Secretary to Government, Law (Education) Department.

Dated—Mudabidri, the 11th February 1921.

No.—R.O.C. 2105-20-E.1.

Draft of the agreement called for is submitted for approval and return with instructions as to whether the fair copy should be engrossed on stamp paper and whether it should be registered and, if so, at whose cost.

ENCLOSURE

Draft agreement.

Printed as an annexure to this Government Order.]

III

Memorandum No. 514 B-1, Law (Education), dated 18th February 1921.

The draft agreement under section 5 of the Ancient Monuments Preservation 1904, for the preservation of the Mangaladevi temple at Mangalore, received the Collector of South Kanara, is forwarded to the Advocate-General who is ested to advise the Government whether the fair copy of the agreement should ngrossed on stamp paper and whether it should be registered and, if so, at whose

R. A. GRAHAM,
Secretary to Government.

tter—from H. Brightwell, Esq., Government Solicitor, Madras.
—the Secretary to Government, Law (Education) Department.
ted—the 25th February 1921.
.—266.

———— -Forwarding the following opinion of the Advocate-General, No. 83, dated 24th February 1921 :—

Opinion.

Under the Ancient Monuments Preservation Act, section 5 (1), the Collector makes a proposal to the owner and thereafter under (3) an agreement is executed by the Collector on behalf of the Secretary of State for India. Under section 3 of the Stamp Act, no stamp duty is chargeable in respect of any instrument executed by or on behalf of Government, and therefore the agreement in question is exempt from stamp duty. An agreement as such and certainly an agreement within the Ancient Monuments Preservation Act does not fall under any of the cases specified in section 29 so that there is no doubt that the instrument in question is exempt from stamp duty. The case is however otherwise with regard to registration.

Under the Registration Act XVI of 1908, documents are registerable if they are non-testamentary instruments which purport or operate to create, declare, limit or extinguish whether at present or in future any right, title or interest, whether vested or contingent of the value of Rs. 100 or upwards in or to immovable property. Having regard to the scope and object of the Ancient Monuments Preservation Act and having special regard to section 5 (*c*) and (*d*) and the right of public access to the monument provided for in section 15, there is no question, but that the procedure of executing the agreement limits the owner's right in the property. I am therefore of opinion that the document has to be registered under the provisions of the Indian Registration Act.

K. P. Ramaswami Ayyar,
Advocate-General.

ANNEXURE

DRAFT AGREEMENT.

[For cases in which the trustees undertake to execute at their cost all ordinary repairs to the monument.]

This AGREEMENT executed on the day of One thousand nine hundred and twenty-one between ATTAVAR RAMA RAO and NARASIMHA AITHALA, trustees of the Mangaladevi temple of Mangalore Thota village, Mangalore taluk, South Kanara district, hereinafter called the trustees which expression where the context admits shall be deemed to include the survivors of them or other the trustees for the time being of the said Mangaladevi temple and their successors in office of the one part and the RIGHT HONOURABLE THE SECRETARY OF STATE FOR INDIA IN COUNCIL hereinafter called the Secretary of State which expression where the context admits shall be deemed to include his successors in office for the time being of the other part.

WHEREAS under section 3 of the Ancient Monuments Preservation Act (Act VII of 1904) the Mangaladevi temple specifically described in the schedule annexed hereto and hereinafter referred to as "the protected monument" heretofore in the possession and management of the trustees above named on behalf of the Mangaladevi temple has been declared by the Government of Madras to be a protected monument under the said Act.

AND WHEREAS with a view to preserve the protected monument in its present condition, the Collector of South Kanara with the previous sanction of the Madras Government proposed to the said trustees that they should enter into an agreement with the said Secretary of State for India in Council for the preservation of the protected monument and the said trustees have accepted the proposal.

AND WHEREAS the terms of the said agreement so proposed and accepted are embodied in these presents.

AND WHEREAS these presents by G.O. No. 317, Law (Education), dated the 5th March 1921, have been approved by the Government of Madras.

NOW THESE PRESENTS WITNESS that it is hereby mutually agreed by the trustees and the said Secretary of State as follows :—

(1) The trustees shall maintain the said protected monument in proper condition and repair and agree to abide by and carry out the orders of the Madras Government and the Collector of South Kanara for the time being as to the manner in which the same is to be preserved and as to the repairs and all other measures that may be deemed necessary from time to time for that purpose.

(2) The trustees shall have the Mangaladevi temple under their control and make necessary arrangements for watching the same. The trustees shall not either themselves or through others destroy, remove, alter or deface the protected monument and in particular in addition and without prejudice to the foregoing conditions the trustees shall not construct or allow or give permission to others to construct huts or other buildings on the site in front of or near walls or other partitions in or near the protected monument.

(3) The trustees and their successors in office shall not allow the protected monument to be used by any person for residential purposes.

(4) The trustees shall allow all facilities for access to the protected monument to the officers and servants of the Archæological Department and also such facilities for access to the protected monument to other officers of Government and to the public or any portion thereof at such times and in such manner as the Collector of South Kanara for the time being in writing require.

(5) The trustees shall not sell or allow to be sold the site of the protected monument and land to a distance of 100 feet on four sides of it.

(6) The Secretary of State shall pay all expenses which may be incurred in connexion with the preservation and repair of the protected monument at the request of or under the orders of the Collector of South Kanara for the time or the Government of Madras. But ordinary repairs to the said temple periodical or otherwise shall be done at the expense of the trustees, after approval by the Collector.

(7) Subject in all respects to the foregoing conditions the trustees may with the approval of the Collector conduct in the said temple such religious ceremonies as will not involve the exclusions of persons not belonging to the Hindu community.

IN WITNESS WHEREOF the said A. Rama Rao and Narasimha Aithala and the Collector of South Kanara on behalf of the Secretary of State for India in Council have hereunto set their respective hands and seals the day and year first above written.

The Schedule above referred to.

Name of the district, taluk and village.	Description, wet or dry, with survey or paimash number.	Name of owner.	Boundaries.	Extent.
92, Mangalore Thota village, Mangalore taluk, South Kanara district.	Dry land—S. No. 93, T.S. No. 334 of No. 8 Jeppu ward.	Attavar Rama Rao and Narasimha Aithala, moktessors of the temple.	North by T.S. No. 382, garden of Narasimha Aithala, and T.S. No. 383, dry land of Mangaladevi temple; east by T.S. No. 638, poramboke road; south by T.S. No. 385, poramboke road; west by T.S. No. 386, garden of Gangadar Aithala, and T.S. No. 331, garden of Shivarma Aithala.	65 cents (R

Archaeology — Ancient Monuments

Sectt II-10 (a)—35,10 5—9-2-20. Preservation Act, 1904. Law (Sec) DEPARTMENT

Mangaladevi Temple at Mangalore —

Protection — Draft agreement approved — Advocate-Genl's opinion as Registration of agreements — Communicated.

I

READ AGAIN G.O. No. 1456 Edn. (F), dated 8-12-1920.

" " " " 101 " " (G) 21-1-1921.

READ ALSO:—

II

C. No. 514 B, From the Collr. of S. Kanara, No. Roc 2105-20-E.1, dated 11-2-1921.

III

" Memo: to the Govt. Solicitor " 514 B-1 " 18-2-1921.

IV

" 679 B " From " do " 266 " 25-2-1921.

ORDER. No. 317, dated 5-3-1921.

P.S.

The draft agreement under section 5 of the Ancient Monuments Preservation Act 1904, for the preservation of the Mangaladevi Temple at Mangalore, submitted with the letter from the Collr. of S. Kanara read above, is approved as amended and is annexed to these Proceedings.

2. A copy of the Advocate-general's opinion No. 83 dt. 24.2.21 is communicated to the collector for information. The cost of registration of the agreements will be borne by Government.

Draft witness Ico 8/3

To the Collr. of S. Kanara
Their collectorate
The S.A.S
" P.A.C. for Reference

Law (Sec) 8-3-21

Attested
W.H.S. Lt.

G.O. No. 317, 5th March 1921

Archæology—Ancient Monuments Preservation Act, 1904

Mangaladevi temple at Mangalore—Protection—Draft agreement approved—Advocate-General's opinion regarding registration of agreements—Communicated.

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G.O. No. 1456, Home (Education), dated 8th December 1920.

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Letter—from R. H. ELLIS, Esq., I.C.S., Collector of South Kanara.
To—the Secretary to Government, Law (Education) Department.
Dated—Mudabidri, the 11th February 1921.
No.—R.O.C. 2105-20-E.1.

Draft of the agreement called for is submitted for approval and return with ructions as to whether the fair copy should be engrossed on a stamp paper and ther it should be registered and, if so, at whose cost.

ENCLOSURE

Draft agreement.

[Printed as an annexure to this Government Order.]

III

Memorandum No. 514 B-1, Law (Education), dated 18th February 1921.

The draft agreement under section 5 of the Ancient Monuments Preservation Act, 1904, for the preservation of the Mangaladevi temple at Mangalore, received from the Collector of South Kanara, is forwarded to the Advocate-General who is requested to advise the Government whether the fair copy of the agreement should be engrossed on stamp paper and whether it should be registered and, if so, at whose cost.

R. A. GRAHAM,
Secretary to Government.

To the Government Solicitor.

Pres

Please strike off.

cvv
11.3.21

No. 317, Law (Education), 5th March 1921

IV

Letter—from H. Brightwell, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Law (Education) Department.
Dated—the 25th February 1921.
No.—266.

Abstract.—Forwarding the following opinion of the Advocate-General, No. 83, dated 24th February 1921:—

Opinion.

Under the Ancient Monuments Preservation Act, section 5 (1), the Collector makes a proposal to the owner and thereafter under (3) an agreement is executed by the Collector on behalf of the Secretary of State for India. Under section 3 of the Stamp Act, no stamp duty is chargeable in respect of any instrument executed by or on behalf of Government, and therefore the agreement in question is exempt from stamp duty. An agreement as such and certainly an agreement within the Ancient Monuments Preservation Act does not fall under any of the cases specified in section 29 so that there is no doubt that the instrument in question is exempt from stamp duty. The case is however otherwise with regard to registration.

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C. P. Ramaswami Ayyar.
Advocate-General.

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2. A copy of the Advocate-General's opinion No. 83, dated 24th February 1921, is communicated to the Collector for information. The cost of registration of the agreements will be borne by Government.

(By order of the Governor in Council)

R. A. Graham,
Secretary to Government.

To the Collector of South Kanara.
All other Collectors.
The Superintendent, Archæological Survey.
The Assistant Archæological Superintendent for Epigraphy.
The Public Works Department.
The Publicity Officer.

ANNEXURE

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[For cases in which the trustees undertake to execute at their cost all ordinary repairs to the monument.]

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Previous Papers

.. 33 Pub. dy 12.1.10
.. 787 .. dy 30.8.10
.. 1264 Est dy 23.9.18
.. 1237 .. dy 23.10.20
.. 1456 .. dy 8.12.20
.. 101 .. dy 21.1.21

Law (Estt.)

Ancient Monuments – Draft agreement.

From the Collr. of S. Kanara, No. 2105-20-E, dy 11.2.21 [C.5 14 B]

As.

In forwarding a draft agreement for the preservation of the Mangaladevi Temple, the Collr. of S. Kanara solicits instructions as to whether the pair of the agreement should be engrossed on stamp paper and whether it should be registered and if so, at whose cost

2. The Govt. have prescribed 2 forms of agreement under the Act – pages 33-35 of the list of Ancient Monuments. The first is prescribed for trustees who undertake to execute at their cost all ordinary repairs to the monument (prescribed in G.O. 787 Pub. dy 30.8.1916) and the other, in cases in which the repairs are done at Govt. expense (vide G.O. 33 Pub. dy 12.1.10). In the latter

~~1.24-A(K)~~

with reference to clause (7), it is necessary that the document should be registered and stamped up to the maximum ~~in~~ in respect of which the Secy. of State is to have a charge on the protected monument — vide para 2(b) of the Govt. Solicitor's opinion on p. 5 of ~~f~~ 33 Public of 12.1.10. A similar clause does not exist in the first form of agreement. The question whether in this case, the agreement should be on stamped paper registered does not appear to have been raised before. The agreement now in question comes under this and, as the Govt. solicitor definite instructions in the matter, the opportunity may be taken to clear it up by a reference to the ~~Director~~ Advocate General.)

3. Draft memo: submitted.

RSL
17/2/21

~~Nov~~
17.2.21

Jd
18.2.21

[Memo: 514 B-LB 18.2.21]

pp. 6-7 cf [C. 679 B] From the Govt. Solicitor, No. 266 dt 25.2.21

A.S.

The Advocate-General considers that the agreements are exempt from stamp duty but that they should be registered. He do not mention who should bear the cost of registration. As the agreement is an instrument executed on behalf of Govt. and as the Govt. are mainly interes in the preservation of the monume the cost of registration will presum have to be borne by Govt.

2. A copy of the A.G's opinion may be communicated the Collr. of S. Kanara and also other collectors for information.

3. The draft agree ment on pp. 2-4 cf. has been checked and may be approved amended.

4. Draft order subm

Cov
1.3.21

3/3/21

1.3.21

1 b cf

at i.e. of minds
in p. 5 cf.

Why not say so then?
R&C
3/3/21

5.
Please see addition
to be made in para 2 of the draft.

R&C
4/3/21

PRESS SLIP.

~~ORDINARY.~~ ~~PREFERENCE.~~ Very URGENT (a).

Secrt. II—38—1-17. Law (Con) DEPARTMENT. Public

Current No. ..... dated 191

G.O. No. 317, dated 5-3- 1922

Number of MS. pages sent (b) Correspondence 7+1 (b1) Notes. (on the paper)

Brief subject. Ancient Monuments.

(c) Number of copies required when struck off (copies for volumes and editors retained in the Press).	E. T. copies to supply requisitions for purchase by the public.	Complete correspondence and orders.	Notes.
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Spare copies				Total ...	
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The Gr. Court	255				
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The S.A.S.		0			
The					
The A.A.S.		4			
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The P.W.D.		2			
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The Extra		23			
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The					
Total ...		230			

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INSTRUCTIONS FOR THE SECRETARIAT.

(a) If a paper is marked to be printed urgently, the Superintendent of the section concerned should sign the Press slip. The Superintendent should exercise a careful discretion in the matter.

(b) Each letter, memorandum, or order, or set of orders, in the file of correspondence should be headed in succession with the Roman numeral I, II, III, etc., the number being written in red ink or blue chalk above the item. The particular papers to be printed in the special issue-copies should be indicated by the Roman numeral (I, II, etc.) by which that item has been headed in the correspondence file. All matter, including marginal remarks or references, to be printed should be written in ink and matter which should not be printed should be encircled. Initials and signatures that are not quite legible should be re-written distinctly.

(b1) For rules regarding printing of notes, see rule 315 of the office Manual.

(c) The number of copies and the details of distribution should be filled in by the Superintendent or Referencer concerned.

(d) In the absence of special instructions to the Press to keep matter standing for a specified period, ordinary papers of 8 pages and under will be kept standing for *one* week, and larger papers for *two* weeks only. *The type of notes and of all confidential papers is distributed immediately after striking.*

(e) This slip, properly and completely filled in, should accompany every paper sent to Press; it will be returned by the Press when proofs are furnished; it should be sent to the Press when a call is made for revised proofs or when a corrected proof is sent for striking. When finally returned by Press it should be filed with the original order or letter.

INSTRUCTIONS FOR THE PRESS.

(a) If, in the opinion of the Superintendent of the Press, a paper has been marked urgent unnecessarily, he should send the Press slip to the Registrar with a remark to that effect.

(b) Unless a note to the contrary is made against the matter, pencil entries should not be printed. The Superintendent of the Press may bring to the notice of the Registrar any instance of incomplete or careless editing.

(c) Signature copies of letters to the Secretary of State or to the Government of India should be printed on hand-made paper.

(d) This slip should be returned by the Press to the Secretariat when proofs are furnished; it will be sent back to the Press when proofs are returned corrected and should be finally returned to the Secretariat when struck-off copies are supplied.

(e) The names of the Secretary and Members should be printed in full when they occur on the right hand side, only the first time when they appear on the left side, the initials alone being printed later.

TO PRESS, MADRAS OOTY.

	B	C
Pleasee send proof in duplicate. The papers have been carefully edited.	Proof returned corrected. Please strike off and send number of copies as indicated.	As the matter is clear manuscript and has been carefully edited, (*b*) proof need not be sent. Please print and supply number of copies as indicated.
	Type may be released ~~after usual interval.~~ at once.	Type may be released after usual interval.
CW 5.3.21 *Referencer.* / *Clerk.*	*Referencer.* / *Clerk.*	*Referencer.* / *Clerk.*
Supdt.	*Supdt.*	*Supdt.*

SPECIAL INSTRUCTIONS.